

ORDINANCE NO. 09-26

ORDINANCE REPEALING AND
RESCINDING HIALEAH, FLA.,
ORDINANCE 84-08 (JAN. 24, 1984) IN ITS
ENTIRETY; REPEALING ALL
ORDINANCES OR PARTS OF
ORDINANCES IN CONFLICT
HEREWITH; PROVIDING PENALTIES
FOR VIOLATION HEREOF; PROVIDING
FOR A SEVERABILITY CLAUSE; AND
PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 1984, the City of Hialeah, pursuant to Hialeah, Fla., Ordinance 84-08 (Jan. 24, 1984), established workforce requirements for public construction projects in excess of \$50,000 that were financed by local (County), state and federal funding that required the composition of the construction work force to be at least 5% women, 50% Hialeah residents and 25% “nationally recognized ethnic minorities”; and

WHEREAS, while workforce diversity goals and objectives are laudable, the federal courts in *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County, Florida*, 943 F. Supp. 1546 (S.D. Fla. 1996) cert. den. *Metropolitan Dade County v. Engineering Contractors Association of South Florida, Inc.*, 523 U.S. 1004 (1998) require a significant statistical disparity to justify a legislative inference of discrimination that would justify a remedy of increasing minority or gender-based participation in the work force; and

WHEREAS, the City has not conducted any statistical studies since 1984 that would support or justify the continuation of the mandatory workforce diversity and residency requirements for construction projects; and

WHEREAS, the City has encountered difficulties in partnering with the Florida Department of Transportation in construction projects on state roads within the City because of City mandates that conflict or cannot be reconciled with agency workforce goals and objectives; and

WHEREAS, the City desires to repeal this ordinance in light of the foregoing reasons and conclusions.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida, hereby repeals and rescinds Hialeah, Fla., Ordinance 84-08 (Jan. 24, 1984) in its entirety.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the

Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 14th day of April, 2009.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.



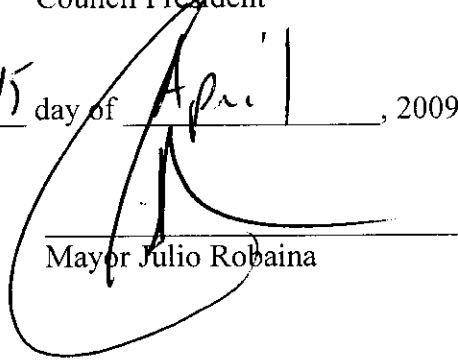
Carlos Hernandez
Council President

Attest:

Approved on this 15 day of April, 2009.

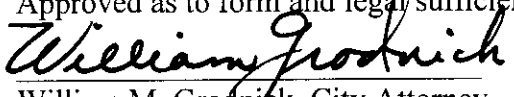


Rafael E. Granado, City Clerk



Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

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Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes".

ORDINANCE REQUIRING NOT LESS THAN FIFTY (50) PERCENT OF THE WORK FORCE ON CONSTRUCTION PROJECTS IN EXCESS OF \$50,000.00 WITHIN THE CITY OF HIALEAH FINANCED BY LOCAL, STATE, OR FEDERAL FUNDING SHALL BE RESIDENTS OF THE CITY OF HIALEAH; AND FURTHER REQUIRING THAT NOT LESS THAN TWENTY-FIVE (25) PERCENT OF THE JOBS BE FILLED BY MEMBERS OF NATIONALLY RECOGNIZED ETHNIC MINORITIES AND NOT LESS THAN FIVE (5) PERCENT OF THE JOBS BE FILLED BY WOMEN; , REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTY FOR THE VIOLATION HEREOF; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a large number of Hialeah residents remain unemployed in spite of the recent economic recovery and it is the duty of local government to assist in the solution of this major problem; and

WHEREAS, it is in the best interest of all of the taxpayers of the City of Hialeah, that the available work force residing within the City of Hialeah be employed; and

WHEREAS, the City of Hialeah is not attempting to regulate business, but merely to participate in the market place; and

WHEREAS, this ordinance does not apply to all construction work done in the City of Hialeah, but only construction work contracted by the City to be paid for by local, state, or federal funding.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

Section 1. That all construction projects contracted for by the City of Hialeah with a cost in excess of \$50,000.00, and funded by local, state or the federal government or a combination thereof, shall have a work force consisting of not less than fifty (50) percent Hialeah residents.

Section 2. That not less than twenty-five (25) percent of the total work force shall be members of nationally recognized ethnic minorities and not less than five (5) percent of the total work force shall be held by women.

Section 3. Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Penalties.

Any person, firm or corporation convicted of violating the provisions of this ordinance shall be punished by a fine, not exceeding \$500.00, or by a jail sentence, not exceeding sixty (60) days, or both, in the discretion of the Court.

Section 5. Inclusion in Code. The provisions of this Ordinance shall be included and incorporated in the Code of the City of Hialeah, as an addition or amendment thereto, and the sections of this Ordinance

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nance shall be re-numbered to conform to the uniform numbering system of the Code.

Section 6. This Ordinance shall become effective when passed by the City Council of the City of Hialeah and signed by the Mayor of the City of Hialeah.

PASSED and ADOPTED this 24th day of January, 1984.

/s/ Silvio A. Cardoso
Council President

ATTEST: /s/ Daniel F. DeLoach
City Clerk

APPROVED: /s/ Raul L. Martinez
Mayor

APPROVED AS TO LEGAL
SUFFICIENCY AND AS TO FORM

William H. S. [Signature]
Assistant City Attorney

ORDINANCE was adopted by a unanimous vote with Councilmembers Cardoso, D'Angelo, Dorrego, Mejides, Nunez, Robinson and Swezy voting "Yes".